



Amendment No. 2  
To  
Contract No. PE170000002  
For  
Deoxyribonucleic Acid Analysis of Biological Evidence  
between  
Bode Cellmark Forensics, Inc.  
and the  
City of Austin

- 1.0 The City hereby extends the above referenced Contract until December 31, 2025.
- 2.0 Effective January 1<sup>st</sup>, 2021, the Contract prices shall be increased by 2.5% on an annual basis. The 2.5% price increases shall become active on January 1<sup>st</sup> of each subsequent contract year after the initial price adjustment on January 1, 2021.
- 3.0 The total Contract amount is hereby increased by \$703,500. The total Contract authorization is recapped below:

Term	Contract Amount for the Item	Total Contract Amount
Basic Term: 08.10.2017 – 09.30.2018	\$1,300,000.00	\$1,300,000.00
Amendment No. 1: Contract Extension & Updated Exhibit C, 10.1.2018 – 12.31.2020	\$0.00	\$1,300,000.00
Amendment No. 2: Contract Extension, Authorization Increase, Price Increase 12.31.2020 – 12.31.2025	\$703,500.00	\$2,003,500.00

- 4.0 MBE/WBE goals were not established for this contract.
- 5.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 6.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURE(S) affixed below, this Amendment is hereby incorporated and made a part of the above-referenced contract. The contract amendment shall become effective on the date executed by the City.

Signature & Date:

 05/02/2019

Printed Name: Mike Cariola  
General Manager  
Bode Cellmark Forensics, Inc.  
10430 Furnace Road, Suite 107  
Lorton, VA 22079

Signature & Date:

 05/03/19

Printed Name: Matthew Duree  
Title: Procurement Manager  
City of Austin Purchasing Office



Amendment No. 1  
to  
Contract No. PE17000002  
For  
Deoxyribonucleic Acid Analysis of Biological Evidence  
between  
Bode Cellmark Forensics, Inc.  
and the  
City of Austin

- 1.0 The City hereby extends the above referenced Contract until December 31, 2020.
- 2.0 Exhibit C is hereby deleted in its entirety and replaced with an updated Exhibit C.
- 2.0 The total Contract amount remains unchanged and is recapped below:

Term	Contract Amount for the Item	Total Contract Amount
Basic Term, 08/10/2017 – 09/30/2018	\$1,300,000.00	\$1,300,000.00
Amendment No. 1: Contract Extension & Updated Exhibit C 10/1/2018 – 12/31/2020	\$0.00	\$1,300,000.00

- 3.0 MBE/WBE goals were not established for this contract.
- 4.0 By signing this Amendment, the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

BY THE SIGNATURE(S) affixed below, this Amendment is hereby incorporated and made a part of the above referenced contract. This contract amendment shall become effective on the date executed by the City.

Signature & Date:

Printed Name: Mike Cariola, 09/20/2018  
Bode Cellmark Forensics, Inc.  
10430 Furnace Road, Suite 107  
Lorton, VA 22079

Signature & Date:

Erin D'Vincent  
Procurement Specialist IV  
City of Austin Purchasing Office

Updated Exhibit C

Month	# of DANY designated SAKs to be reported	# of other casework/non-DANY designated SAKs to be reported	Total*
Oct-17	15	0	15
Nov-17	25	0	25
Dec-17	50	0	50
Jan-18	75	0	75
Feb-18	75	0	75
Mar-18	100	0	100
Apr-18	110	0	110
May-18	110	0	110
Jun-18	110	0	110
Jul-18	110	0	110
Aug-18	110	0	110
Sep-18	110	0	110
Oct-18	90	90	90
Nov-18	90	90	90
Dec-18	90	90	90
Jan-19	90	90	90
Feb-19	75	75	75
Mar-19		100	100
Apr-19		100	100
May-19		100	100
Jun-19		100	100
Jul-19		150	150
Aug-19		150	150
Sep-19		150	150
Oct-19		150	150
Nov-19		150	150
Dec-19		150	150
Jan-20		150	150
Feb-20		150	150
Mar-20		150	150
Apr-20		150	150
May-20		150	150
Jun-20		150	150
Jul-20		150	150
Aug-20		150	150
Sep-20		150	150
Oct-20		150	150
Nov-20		150	150
Dec-20		150	150
<b>Total*</b>	<b>1000</b>	<b>3,535</b>	<b>4,535</b>

**CONTRACT BETWEEN THE CITY OF AUSTIN  
AND  
Bode Cellmark Forensics, Inc.  
For  
Forensic Serological and Deoxyribonucleic Acid Analysis of Biological Evidence  
MA 8700 PE17000002**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Bode Cellmark Forensics, Inc. ("Contractor"), having offices at 10430 Furnace Road, Suite 107, Lorton, VA 22079.

**SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES**

1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.

1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.

1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Jessica Danso, Phone: (703) 646-9875, Email Address: [Contracts@bodetech.com](mailto:Contracts@bodetech.com). The City's Contract Manager for the engagement shall be Albert Banda, Phone: (512) 974-5273, Email Address: [Alberto.Banda@austintexas.gov](mailto:Alberto.Banda@austintexas.gov). The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

**SECTION 2. SCOPE OF WORK**

2.1 **Contractor's Obligations.** The Contractor shall fully and timely provide all deliverables described herein and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

2.2 **Tasks.** In order to accomplish the work described herein, the Contractor shall perform the tasks outlined in Exhibit D, Scope of Work, Exhibit A, Pricing Agreement, and Exhibit E, Testing Schedule.

**SECTION 3. COMPENSATION**

3.1 **Contract Amount.** The Contractor will be paid as indicated herein upon the successful completion of the Scope of Work. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed \$1,300,000.00 for all fees and expenses.

3.2 **Invoices.**

3.2.1 **Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the below address:

	City of Austin
Department	Austin Police Department
Attn:	Accounts Payable
Address	P.O. Box 1629
City, State, Zip Code	Austin, TX 78767

3.2.2 Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.

3.2.3 Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

3.2.4 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

### 3.3 **Payment.**

3.3.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

**3.3.2 If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**

3.3.3 The City may withhold or off set the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

3.3.3.1 delivery of defective or non-conforming deliverables by the Contractor;

3.3.3.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

3.3.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;

3.3.3.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

3.3.3.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

3.3.3.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or

3.3.3.7 failure of the Contractor to comply with any material provision of the Contract Documents.

3.3.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

3.3.5 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.

3.4 **Non-Appropriation.** The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this Contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation

to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

### 3.5 **Final Payment and Close-Out.**

3.5.1 The making and acceptance of final payment will constitute:

3.5.1.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

3.5.1.2 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

## **SECTION 4. TERM AND TERMINATION**

4.1 **Term of Contract.** This Contract shall become effective on the date executed by the City ("Effective Date") and shall remain in effect until the earliest of when the deliverables set forth in the Scope of Work are complete or the City terminates the Contract.

4.1.1 Upon expiration of the contract, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 calendar days unless mutually agreed on in writing).

4.2 **Right To Assurance.** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

4.3 **Default.** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

4.4 **Termination For Cause.** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

4.5 **Termination Without Cause.** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

4.6 **Fraud.** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

## **SECTION 5. OTHER DELIVERABLES**

5.1 **Insurance:** The following insurance requirements apply.

### 5.1.1 **General Requirements.**

5.1.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Contract and during any warranty period.

5.1.1.2 The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to Contract execution and within fourteen (14) calendar days after written request from the City.

5.1.1.3 The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

5.1.1.4 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

5.1.1.5 The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

5.1.1.6 The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.

5.1.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall be mailed to the following address:

City of Austin  
Purchasing Office  
P. O. Box 1088  
Austin, Texas 78767

5.1.1.8 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

5.1.1.9 If insurance policies are not written for amounts specified in Paragraph 5.1.2, Specific Coverage Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

5.1.1.10 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

5.1.1.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory

law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

5.1.1.12 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

5.1.1.13 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

5.1.1.14 The Contractor shall endeavor to provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

5.1.2 **Specific Coverage Requirements.** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

5.1.2.1 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

5.1.2.1.1 Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.

5.1.2.1.2 Contractor/Subcontracted Work.

5.1.2.1.3 Products/Completed Operations Liability for the duration of the warranty period.

5.1.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.

5.1.2.1.5 Thirty (30) calendar days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.

5.1.2.1.6 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

5.1.2.2 **Business Automobile Liability Insurance.** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements:

5.1.2.2.1 Waiver of Subrogation, Endorsement CA0444, or equivalent coverage.

5.1.2.2.2 Thirty (30) calendar days Notice of Cancellation, Endorsement CA0244, or equivalent coverage.

5.1.2.2.3 The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

5.1.2.3 **Worker's Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

5.1.2.3.1 The Contractor's policy shall apply to the State of Texas.

5.1.2.3.2 Waiver of Subrogation, Form WC420304, or equivalent coverage.

5.1.2.3.3 Thirty (30) calendar days Notice of Cancellation, Form WC420601, or equivalent coverage.

5.1.2.4 **Professional Liability Insurance.** The Contractor shall provide coverage, at a minimum limit of \$1,000,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission arising out of the performance of professional services under this Agreement.

If coverage is written on a claims-made basis, the retroactive data shall be prior to or coincident with the date of the Contract and the certificate of insurance shall state that the coverage is claims-made and indicate the retroactive date. This coverage shall be continuous and will be provided for 24 months following the completion of the contract.

5.1.2.5 **Endorsements.** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

## 5.2 **Equal Opportunity.**

5.2.1 **Equal Employment Opportunity.** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

5.2.2 **Americans With Disabilities Act (ADA) Compliance.** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

5.3 **Interested Parties Disclosure.** As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the Offeror. Link to Texas Ethics Commission Form 1295 process and procedures below:

[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

5.4 **Acceptance of Incomplete or Non-Conforming Deliverables.** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

## 5.5 **Delays.**

5.4.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its

right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

5.5.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

5.6 **Ownership And Use Of Deliverables.** The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

The Contractor acknowledges that this Contract serves a public safety purpose of the City, and that the City may use the Deliverables in criminal or civil proceedings, or both. The Contractor further acknowledges that the City may provide such deliverables to third party governmental agencies with which the City cooperates for the same purposes. As required by the City in its discretion, the Contractor agrees that it will cooperate with the City, as well as with any other governmental entity working in cooperation with the City, in order to support and give full effect to the City's use of the Deliverables. The Contractor's obligations include, but are not limited to, providing reports, giving testimony in any civil or criminal proceedings, and providing to provide all information necessary to both independently verify the validity of the deliverable and to satisfy any legal obligation, burden of proof, or other requirement imposed in such proceedings upon the City or any third party governmental entity with which the City shares the deliverables.

5.7 **Additional Assignments.** The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligation to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this paragraph shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms herein.

5.8 **Rights to Contractual Material.** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

5.9 **Publications.** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

## **SECTION 6. WARRANTIES**

### **6.1 Warranty – Price.**

6.1.1 The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

6.1.2 The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

6.1.3 In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

6.2 **Warranty – Services.** The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

6.2.1 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

6.2.2 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the acceptance date. If during the warranty period, one or more of the warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

6.2.3 If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

## **SECTION 7. MISCELLANEOUS**

7.1 **Place and Condition of Work.** The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

### **7.2 Workforce.**

7.2.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

7.2.2 The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:

7.2.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Contract; and

7.2.2.2 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

7.2.3 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

7.3 **Compliance with Health, Safety, and Environmental Regulations.** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

7.4 **Significant Event.** The Contractor shall immediately notify the City's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

7.4.1 disposal of major assets;

7.4.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;

7.4.3 any significant termination or addition of provider contracts;

7.4.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;

7.4.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this Contract;

7.4.6 reorganization, reduction and/or relocation in key personnel;

7.4.7 known or anticipated sale, merger, or acquisition;

7.4.8 known, planned or anticipated stock sales;

7.4.9 any litigation against the Contractor; or

7.4.10 significant change in market share or product focus.

## 7.5 **Audits and Records.**

7.5.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

7.5.2 Records Retention:

7.5.2.1 Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contractor's internal administration.

7.5.2.2 All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City.

7.5.3 The Contractor shall include sections 7.5.1 and 7.5.2 above in all subcontractor agreements entered into in connection with this Contract.

7.6 **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

7.7 **Indemnity.**

7.7.1 Definitions:

7.7.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

7.7.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;

7.7.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

7.7.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

**7.7.2 THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

7.8 **Claims.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2<sup>nd</sup> Street, 4<sup>th</sup> Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

7.9 **Notices.** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:

City of Austin, Purchasing Office

ATTN: Erin D'Vincent

P O Box 1088

Austin, TX 78767

To the Contractor:

Bode Cellmark Forensics

ATTN: Contracts Dept

10430 Furnace Road, Suite 107

Lorton, VA 22079

[contracts@bodetech.com](mailto:contracts@bodetech.com)

With a copy to:

Laboratory Corporation of America Holdings

Attn: Law Department

531 South Spring Street

Burlington, NC 27215

7.10 **Confidentiality.** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

7.11 **Advertising.** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law. The Contractor shall not mention or describe this Agreement or its relationship with the City in any marketing, promotional, or other commercial materials without first obtaining the prior written approval from the City. The City shall not mention or describe this Agreement or its relationship with the Contractor in any marketing, promotional, or other commercial materials without first obtaining prior written approval from the Contractor.

7.12 **No Contingent Fees.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

7.13 **Gratuities.** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

7.14 **Prohibition Against Personal Interest in Contracts.** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

7.15 **Independent Contractor.** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

7.16 **Assignment-Delegation.** The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

7.17 **Waiver.** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

7.18 **Modifications.** The Contract can be modified or amended only in writing signed by both parties. No pre-printed or similar terms on any Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

7.19 **Interpretation.** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

#### 7.20 **Dispute Resolution.**

7.20.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

7.20.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

7.21 **Jurisdiction And Venue.** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be

construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

7.22 **Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

7.23 **Holidays.** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

7.24 **Survivability of Obligations.** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

7.25 **Non-Suspension or Debarment Certification.** The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

7.26 **Incorporation of Documents. Section 0100, Standard Purchase Definitions,** is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address:  
[https://assets.austintexas.gov/purchase/downloads/standard\\_purchase\\_definitions.pdf](https://assets.austintexas.gov/purchase/downloads/standard_purchase_definitions.pdf)

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

BODE CELLMARK FORENSICS, INC.



By: \_\_\_\_\_  
Signature

Name: Mike Cariola  
Printed Name

Title: General Manager

Date: 8/9/17

CITY OF AUSTIN

By:  \_\_\_\_\_  
Signature

Name: Erin D'Vincent  
Printed Name

Title: Procurement Specialist IV

Date: 8-10-17

## List of Exhibits

Exhibit A	Non Discrimination Certification, Section 0800
Exhibit B	Scope of Work
Exhibit C	Testing Schedule
Exhibit D	Pricing Agreement – SAKs and Expert Witness Testimony
Exhibit E	Pricing Agreement – Non SAKs

**EXHIBIT A**  
**City of Austin, Texas**  
**NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION**

**City of Austin, Texas**  
**Equal Employment/Fair Housing Office**

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

**City of Austin**  
**Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy**

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint,

employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

**Sanctions:**

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

**Term:**

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 10<sup>th</sup> day of August, 2017

CONTRACTOR  
Authorized  
Signature

Mike Casiola  
[Signature]

Title

General Manager

**EXHIBIT B  
SCOPE OF WORK**

**Description: Sexual Assault Kit Backlog Elimination Program**

**1.0 Purpose**

The purpose of this contract is to outsource the serological, technical review and resulting DNA analysis of the Austin Police Department's (APD) sexual assault kits and other casework. Eligible DNA profiles generated by the vendor laboratory will be reviewed by the Texas Department of Public Safety's (DPS) Capitol Area Regional Laboratory for upload into the Combined DNA Index System (CODIS) database in order to assist investigators in solving crimes.

**2.0 Background**

The Austin Police Department (APD) has suspended indefinitely the operations of its in-house DNA laboratory after concerns were raised by the Texas Forensic Science Commission. APD wishes to contract with an accredited forensic DNA laboratory to perform these services to meet grant deadlines as a result of an award of the 2015 Sexual Assault Kit Backlog Elimination Grant Program by the Office of the District Attorney, New York (DANY).

**3.0 Definitions/Abbreviations/Links**

"APD" means Austin Police Department

"ASCLD/LAB" means American Society of Crime Laboratory Directors/Laboratory Accreditation Board and is a non-profit specializing in the accreditation of public and private crime laboratories. The website is: <http://www.ascl-d-lab.org/>

"Capillary Electrophoresis (CE)" means a type of electrophoretic separation methods performed utilizing capillaries.

"Combined DNA Index System (CODIS)" is the generic term used to describe the FBI's program of support for criminal justice DNA databases as well as the software used to run these databases. More information can be found at: <https://www.fbi.gov/about-us/lab/biometric-analysis/codis/codis-and-ndis-fact-sheet>

"DNA" means deoxyribonucleic acid, a self-replicating material present in nearly all living organisms as the main constituent of chromosomes. It is the carrier of genetic information.

"FBI" means Federal Bureau of Investigation.

"Federal DNA Act" information can be found at: <http://www.gpo.gov/fdsys/pkg/USCODE-2011-title42/pdf/USCODE-2011-title42-chap136-subchapIX-partA-sec14132.pdf>

"FTA Card" is a paper matrix laced with a proprietary mixture of chemicals that lyse cells and stabilize nucleic acids on contact for long term storage at room temperature.

"National DNA Index System" is one part of CODIS, the national level, containing the DNA profiles contributed by federal, state, and local participating forensic laboratories. More information can be found at the CODIS link above.

"PCR Product" means the Polymerase Chain Reaction and is end product of amplifying a single copy or few copies of a piece of DNA across several orders of magnitude, generating thousands to millions of copies of a particular DNA sequence.

"Quality Assurance Standards for Forensic DNA Testing Laboratories" are quality assurance measures that place specific requirements on laboratories by the FBI. Information can be found at: [https://www.fbi.gov/about-us/lab/biometric-analysis/codis/qas\\_testlabs](https://www.fbi.gov/about-us/lab/biometric-analysis/codis/qas_testlabs)

“Sexual assault kit” (SAK) means a set of swabs, slides, envelopes, receptacles, instructions and forms specifically designed to collect and preserve physical evidence by a health care professional from a survivor of sexual assault so that the evidence can be used in a criminal sexual assault investigation.

“STR” means Short Tandem Repeats and is a microsatellite, consisting of a unit of two (2) to thirteen (13) nucleotides repeated hundreds of times in a row on the DNA strand. STR analysis measures the exact number of repeating units.

“Technical review” means an evaluation of SAK’s reports, notes, data generated by the laboratory and other documents to ensure that there is an appropriate and sufficient basis for the scientific conclusions stated in the laboratory report.

#### 4.0 **Tasks/Requirements**

##### 4.1 **Contractor’s Mandatory Laboratory Requirements:**

All items listed in this section shall be in compliance throughout the entire solicitation process and through the life of the contract up until the contract expiration.

- A. The Contractor shall participate in an external proficiency testing program from a test provider that has been approved by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB). The laboratory shall successfully complete proficiency tests and shall maintain a Certified Statement of Compliance and forward the results of the most recent proficiency test results to APD as received.
- B. Each employee performing DNA analyses shall undergo at regular intervals not exceeding one hundred (180) days, external proficiency testing by a proficiency testing program that meets the standards issued under FBI’s *Quality Assurance Standards for Forensic DNA Testing Laboratories* (2011) compliance required by the Federal DNA Act at 42 U.S.C. Section 14132(b) (1). Copies of the most recent proficiency testing results for each analyst shall be forwarded to APD as received.
- C. The Contractor shall be accredited by ASCLD/LAB (or equivalent). All analysts working on this project shall meet the education and experience requirements as specified in the most current version of the *Quality Assurance Standards for Forensic DNA Testing Laboratories*. The Contractor shall maintain a current accreditation certificate or certificate of compliance and forward to APD as they are received. Statement of Qualifications for each employee who will be assigned to this contract shall be included in the proposal response under Section 0600 Proposal Preparation Instructions.
- D. The Contractor shall perform the requested DNA analyses to satisfy or exceed current standards for quality assurance program for DNA analysis, issued by the Director of the FBI pursuant to the DNA Identification Act of 1994, entitled *Quality Assurance Standards for Forensic DNA Testing Laboratories*. The Contractor certifies that it will perform the requested DNA Analyses in accordance with the current *Quality Assurance Standards for Forensic DNA Testing Laboratories* and the standards of any accrediting body for which they hold an accreditation certificate.
- E. The Contractor shall process and analyze all samples at Contractor’s facility in a secure, dedicated laboratory and in accordance with the FBI’s most current version of the *National DNA Index System (NDIS) DNA Data Acceptance Standards*. The Contractor certifies that it shall perform the processing and analyses in a secure, dedicated laboratory and in accordance with the most current version of the *NDIS DNA Data Acceptance Standards*.

- F. In order to be consistent with the analyses performed by APD's Crime Laboratory and to provide for complete integration with the existing operations of the State DNA Database, the Contractor shall use Life Technologies Quantifiler® Trio or another quantification kit approved by APD, and use Identifiler Plus kit until the Qiagen 24-Plex kit has been brought online and validated, and the Genemapper® ID-X analysis software. Required instrumentation are Genetic Analyzers from the ABI 3100 or ABI 3500 series of analytical platforms, and ABI 7500 Real time Quantitation systems using HID RT v1.2 software. The Contractor certifies that it will use such kits and systems in its analyses for compatibility with APD's Crime Laboratory.
- G. Blind proficiency samples may be provided by APD to the Contractor for quality assurance purposes during the term of this Contract. The submitted results from the blind samples will be evaluated by APD. If the Contractor fails to demonstrate proficiency, or fails to comply with the time constraints of this Contract, APD may elect to cancel this Contract. Throughout the term of this Contract the Contractor shall be required to present documentation of any corrective action taken to address any quality assurance issue identified by an incorrect result.
- H. The Contractor shall not subcontract any portion of the casework sample handling, processing, analysis, or reporting to any other laboratory not associated with the Contractor's corporation.

#### 4.2 Contractor's Responsibilities

- A. The Contractor shall supply all equipment, materials, labor, staffing, and anything else deemed necessary to process and analyze the forensic DNA casework samples. Upon contract execution, the Contractor shall be able to immediately accept casework samples from APD.
- B. Upon request, the Contractor shall provide APD with a copy of the quality control protocols used by its laboratory for the processing and analyses of forensic DNA samples.
- C. All procedures and critical equipment shall be validated by the Contractor prior to its use in the analysis of the APD's samples. All procedures shall comply with the most current version of the *NDIS DNA Data Acceptance Standards*. Details and results of the Contractor's process validation studies shall be kept on file by the Contractor. Upon request of APD, the Contractor shall provide documentation that demonstrates it has carried out appropriate and adequate validation of its analytical procedures and data interpretation protocols.
- D. The chain of custody for samples shall be documented to include sample receipt by the Contractor, as well as processing; typing and returning evidence samples back to APD. Any exchange of samples between Contractor's personnel shall require a documented transfer record. Final verification of the chain of custody procedure by the Contractor's laboratory supervisor or her/his designee is required. Documentation of chain of custody shall be maintained and returned to APD thirty (30) days after the report and results are approved by APD.
- E. The Contractor acknowledges that the results of a DNA analysis and the comparison of analytical results are made confidential by law, and will treat such information with due care to prevent improper disclosure. The Contractor shall not use forensic DNA evidence samples and/or analytical results of those samples for purposes other than that expressly allowed under this Contract and as allowed by law.

- F. The Contractor shall protect the confidentiality of all records and other materials that are maintained in accordance with this Contract. The Contractor shall have written policies governing access to, duplication and dissemination of all such information. The Contractor laboratory shall provide its employees and agents with a copy of a written explanation of these confidentiality requirements before access to confidential data is permitted. A copy of a signed confidentiality statement for each employee will be maintained on file for audit and review for five (5) years beyond termination of this Contract. Any use, sale, or offering of this data in any form by the Contractor, its employees or assignees, except by valid subpoena or court order for testimony or discovery purposes, will be considered a violation of this Contract. Past vendor conduct, including violations regarding maintenance of confidentiality of laboratory samples may be considered when identifying appropriate vendors for this contract.
- G. The Contractor shall provide testimony in subsequent legal actions related to the evidence analyzed under this Agreement. Contractor shall provide such testimony if and when needed as requested by the District Attorney, County Attorney, City Attorney, or a criminal defense attorney. Contractor shall charge any fees associated with providing expert testimony or consultation to the requesting party or agency. Unless APD or the City of Austin requests expert testimony or consultation from Contractor, Contractor shall not charge APD any fees for expert testimony or consultation under this Agreement.
- H. Evidence to be analyzed shall be submitted to the Contractor in batches shipped via an express shipping service or hand delivered from APD or an APD authorized lab. The Contractor shall analyze and report back the results of the analysis of forensic DNA samples at a mutually agreed upon reporting rate. The Contractor shall provide a plan to APD regarding the capacity of their laboratory to meet this expectation and the schedule of DANY designated and non-DANY designated SAK's to be tested monthly by the Contractor as identified in Exhibit B.
- I. Contractor shall invoice the cases designated as DANY separate from the cases designated as non-DANY.
- J. STR data shall be attempted for all loci contained in the Identifiler Plus kit until the Qiagen 24-Plex kit has been brought online and validated. The analysis of an evidentiary specimen shall not be considered complete until genotypes for all loci have been attempted.

1) Evidentiary samples ready for DNA analysis:

- a. The Contractor laboratory shall use a portion of the sample sent to the Contractor. The Contractor shall obtain APD approval to use the entire sample.
- b. Blind proficiency samples may be included in these casework samples at any time, to be charged at the same rate as casework samples.
- c. All remaining case evidence, packaging, DNA extracts, reagent blanks, and samples/cuttings shall be returned to APD within thirty (30) days after the report and results are approved by APD. The DNA extracts and reagent blanks may be lyophilized (dried) and shall be returned to APD along with the samples on which DNA analysis was performed. A validation study of the lyophilization process used by

the vendor shall be provided to APD at that time. The Contractor shall be responsible for all costs incurred in this process. The acceptable mode of transportation shall provide proper conditions to protect the integrity of the samples, ensure the chain of custody remain intact, and assure prompt delivery. The shipper must guarantee the ability to track all shipments and the mode of transportation shall be approved by APD.

2) Victim and/or Suspect Known Standards:

- a. Known standards may be included with the evidence. Known standards from the victim, eliminations, and any suspects shall be analyzed. The Contractor is authorized to consume the entire known standard that is provided. These standards shall be run using the same instrumentation as the questioned samples.
- b. A full DNA profile shall be obtained using the Identifiler Plus kit until the Qiagen 24-Plex kit has been brought online and validated on the known standards. If the Contractor uses a portion of the known standard provided, and obtains a partial DNA profile, the Contractor shall re-extract and/or re-type the remainder of the sample at no additional cost to APD.
- c. Suspect known data/profiles shall be submitted to the APD laboratory for possible entry into the legal index in CODIS.

3) Any sample that is analyzed by the contractor laboratory that results in a CODIS hit, the contractor laboratory shall analyze the submitted known for comparison purposes and generate a report with the results of the comparison. See exhibit E for associated charges.

4) Sample Analysis and Interpretation (depending upon the type of case):

a. Semen

- I. Semen shall be confirmed on at least one item through microscopic identification of spermatozoa at a minimum of 400x. The only confirmatory test for semen is the microscopic identification of spermatozoa. Once semen is confirmed on at least one item in the sexual assault kit, it is not necessary to examine other submitted items for spermatozoa unless circumstances dictate the need for additional analysis (e.g., multiple assailants or blood).
- II. Should the Contractor laboratory prefer to use a Y-Screening method (via quantification) for the detection of male DNA in a male to female sexual assault case, the Contractor shall submit a proposal to APD for approval prior to use on any cases.
- III. Examination of the victim's panties and/or pants shall include a qualitative acid phosphatase test of the crotch area.
- IV. When presumptive tests (i.e. Acid Phosphatase) for semen are positive, but spermatozoa are not detected to confirm the presence of semen, autosomal DNA testing should be attempted on case-appropriate samples. If no semen is

detected on the orifice swabs and body swabs have been submitted in the sexual assault evidence collection kit, the appropriate body swabs shall be tested for DNA foreign to the victim.

- V. Screening tests for semen must include a preliminary test such as acid phosphatase and microscopic examination for spermatozoa. Any other approach to screening semen must be approved by APD before use on evidence.

b. DNA

- I. An extraction shall be conducted on appropriate unknown samples, and may be followed by a clean-up step. The extraction and clean-up methods used shall be approved by APD prior to beginning casework. Approval shall require demonstration of method validation to include sensitivity tests. Reagent blanks will be processed with each set of extractions and processed to the same extent that evidentiary samples are processed.
- II. A differential extraction shall be performed on appropriate samples that contain spermatozoa. STR analysis shall be performed on both the sperm and non-sperm fractions.
- III. One to two of the most probative questioned samples and, for most cases, one known victim standard and/or suspect standard shall be run using the STR kit as discussed earlier for each case. Each run (defined as a series of samples analyzed as a single set on the capillary electrophoresis (CE) instrument shall include ladders, a positive amplification control, a negative amplification control and appropriate extraction blanks. Reruns will include one of the associated positive controls and one of the associated amplification negative controls. Extraction controls will be rerun as needed. The Contractor shall save any amplified DNA until 30 days after the report is accepted by APD.
- IV. Questioned and known samples shall be extracted in batches separated by space or time. Questioned and known samples may be quantified, amplified, and subjected to electrophoresis on the CE together.
- V. All data shall be analyzed initially at an analytical threshold that has been validated by the laboratory. For any given locus, the minimum analytical threshold for evaluating STR profiles shall be previously established.
- VI. An appropriately validated stochastic threshold shall also be utilized during data analysis. This stochastic threshold shall be evaluated by and made available to APD.
- VII. If the saturation point of the CE instrument is exceeded at any locus (excluding Amelogenin), the sample shall be re-injected to obtain data that falls within the validated guidelines. The analyst may choose the methods validated by the laboratory and approved by APD. The use of any sample showing signs of off

scale data for unknown questioned samples is strictly prohibited. If validated, it may be appropriate to use off scale data for reference samples assuming the Contractor can verify the validity of using off scale data for reference samples.

- VIII. Each ladder used for analysis shall have the appropriate number of alleles present for each locus when analyzed and all peaks shall be correctly labeled.
- IX. Manufacturer provided positive control shall be used as the positive amplification human DNA control. All control peaks shall be correctly labeled and identified at the same analytical threshold that is utilized to analyze samples.
- X. All negative amplification blanks and extraction blanks interpretation shall follow Contractor lab policy. All documentation of investigations of contamination or peaks in the negative controls shall be shared with APD.
- XI. If troubleshooting (by the Contractor) is required to obtain the appropriate results on the case, troubleshooting shall occur at the Contractor expense. If sample remains, the Contractor shall re-analyze the sample. If, based on troubleshooting, it is determined that the Contractor encountered an analytical problem that resulted in the inability to obtain a DNA profile, testing on any additional samples obtained from APD shall be performed at no additional cost to APD.
- XII. All variant alleles, defined as an allele that is not automatically sized by GMID-X using standard panels and bins, shall be re-injected (by the Contractor at no cost to APD) for confirmation purposes. Multiple samples with the same variant may be considered confirmation of the variant allele according to Contractor lab policy. Data from both injections shall be sent to APD. Alleles between markers should be verified as to which locus the allele belongs. Alternate STR kits, other than the one provided for in this contract, may be used for this purpose if necessary.
- XIII. If excessive minus A peaks are observed, the laboratory shall troubleshoot their protocols to eliminate it from their process. Spikes and minus A peaks are acceptable as long as it can be documented that the artifact is not from another cause.
- XIV. If a stutter peak exceeds the published/validated percent stutter associated with each locus and there is no other indication of a mixture, that locus may be interpreted as appropriate in the Contractor protocols.
- XV. Overloaded samples that result in unacceptable pull-up peaks, unacceptable split peaks, stutter bands or extraneous shoulder peaks, shall be re-analyzed to obtain appropriate data. If the spectral is faulty, resulting in pull-up peaks, a new spectral shall be made (samples shall be reinjected after a new spectra has been made on the CE Instrument). Troubleshooting to ensure

proper CE and amplification data is at the expense of the Contractor.

- XVI. The Contractor shall compare any unidentified DNA profile to other profiles obtained from samples extracted and/or processed with that item. Additionally, any unidentified DNA profile shall be checked against all of the Contractor's employee profiles. This information shall be documented and made available to APD upon request.
- XVII. All DNA cases shall be reviewed based on review criteria agreed upon prior to the initiation of sample testing. The Contractor shall provide APD with PC, Windows 7 compatible instrument data collection files and GeneMapper® ID-X data electronically as well as paperwork depicting run dates and controls that are associated with each batch. The electronic data shall include the injections needed to draw conclusions as well as all of the associated controls. Data associated with each batch will be delivered in a folder that is separate from the individual case report and supporting data.
- XVIII. All DNA findings, both negative and positive, shall be documented in a report format specified by APD and agreed to prior to initiation of sample processing.

#### c. Blood

- I. Evidence not previously screened is to be screened for the presence of blood, semen or biological material as appropriate for each type of sample. The Contractor must provide a copy of the screening protocols and procedures to be used. In some cases the suspected samples may be processed for DNA without any pre-screening. The Contractor protocol shall indicate the examination and decision making process for such samples.
- II. Presumptive testing is sufficient to indicate the presence of blood without further testing.

#### d. General

- I. Information will accompany each case listing the items of importance, the order of importance and the biological stain requested. A standardized order of examination will be established by APD for items in sexual assault kits.
- II. For sexual assault cases, up to three (3) samples will be screened and the single most probative male DNA positive sample will proceed to STR analysis. Samples that are male DNA negative, inconclusive for the presence of male DNA or have a high ratio of human:male DNA will not proceed to DNA testing.
- III. A report will accompany all samples pre-screened by APD indicating the nature of the sample (i.e. blood, semen, saliva).

- IV. Victim and suspect standards will be either blood on FTA cards or in liquid form, or buccal swabs. Liquid samples must be dried on FTA cards and stored with the evidence.

5) Organization of Case Files and Supporting Paperwork and Data

Case Files: The Contractor shall provide an electronic (preferred), hardcopy or both "case file" for each case submitted which shall consist of the following (if applicable):

- a. All serology paperwork and testing results (both presumptive and confirmatory).
- b. Any APD required paperwork that will be agreed to prior to initiation of sample processing.
- c.
- d. GeneMapper® ID-X electropherograms for both re-analysis/injections of variant and off-ladder alleles.
- e. Summary table depicting all sample profiles and clear documentation of the interpretation of the analyst.
- f. An index associating all controls with each sample.
- g. Chain of custody record.
- h. Documentation of 100% technical review by a qualified individual.
- i. A court ready written report (See FBI's Quality Assurance Standards for Forensic DNA Testing Laboratories, 9-1-2011, Standard 11.2 for required elements).

Controls and Supporting Paperwork

- a. All technical worksheets reflecting samples for the particular case (extraction/quantitation/amplification/CE set-up).
- b. Documentation of the proper ladder, positive amplification control, negative amplification control, and all samples and extraction blanks for that case. Only documentation of the interpretation of those electropherograms used in the final interpretation are required to be in the final interpretation portion of the case folder. However, documentation shall be made as to why other samples were not used and it should be clear where the unused samples are in the case folder.
- c. GeneMapper® ID-X sample information and associated run files will be provided electronically in a separate folder for the batch (see XVII).

- 6) Copies of written reports which include results and interpretation of the analysis as issued to APD. The case record shall include a chart of sample genotypes.

- 7) Any quality control or quality assurance data, if not archived at the Contractor laboratory, shall be provided to APD.
- K. STR analysis of forensic DNA specimens shall undergo a 100% technical review by a second qualified analyst at their facility. This protocol shall be submitted to, and approved by APD prior to beginning casework.
- L. If it is the only remaining evidence available, PCR product shall be properly preserved by the Contractor (at no additional expense to APD), for a period of thirty (30) days after the report is accepted by APD. This PCR product may be discarded at the end of the thirty (30) days unless APD has requested it to be returned.
- M. The Contractor shall notify APD of any problems in testing immediately upon discovery. The Contractor shall also maintain a contamination log, and make that available upon request. The point of contact for APD is:
- Commander Michael Eveleth  
Austin Police Department  
[Michael.Eveleth@austintexas.gov](mailto:Michael.Eveleth@austintexas.gov)  
Phone: 512-974-6638
- N. If any deliverables do not conform to the contract requirements, APD shall require the Contractor to perform the deliverables or services again in conformity with the contract requirements, at no additional cost, in addition to the City reserving its rights through any and all other legal and equitable remedies.
- O. If, subject to the outcome of an audit, it is determined that the Contractor is in non-compliance with any provisions of the Contract and/or that money is owed to APD by the Contractor, then APD shall exercise its rights of recovery of money owed as authorized in Section 0300, Standard Terms & Conditions, Section 13 of this Solicitation.
- P. If any services are non-compliant with the Contract that results from this Solicitation's requirements, the Contractor shall be notified in writing describing specific areas of non-compliance. The Contractor shall have a twenty (20) calendar day period to file a written response detailing corrective action taken to all such items of non-compliance. The response shall include supporting documentation. Unless otherwise specified, or previously agreed to by APD, the submission of a corrective action plan shall not be accepted as corrective action. For all items of non-compliance satisfactorily resolved by agreement between the Contractor and APD, no further action regarding such items shall be taken. If an item of non-compliance cannot be resolved between the Contractor and APD, and such item remains uncorrected for a period of twenty (20) calendar days or longer after written notification to the Contractor, then such item shall be declared to be an Event of Default.
- Q. The Contractor shall provide entry at all times to APD authorized employee/agent for inspections and other official purposes. Additionally, any other persons designated by APD shall be admitted to monitor the production of deliverables.
- R. The Contractor shall not use the award of this Contract in any product literature or advertising without prior written approval of APD.

#### 4.3 Administrative Responsibilities

- A. Business Records: The Contractor shall be required to maintain and be able to provide complete and accurate records on all business transactions with APD related to the performance of the Contract.
- B. Contact Persons: The Contractor shall designate a person or persons whom APD shall contact to arrange and coordinate the creation and transfer of materials throughout the Contract period.
- C. APD Access to Records: APD shall, subject to limitations provided by law with respect to rights of privacy, have the right to reasonably prompt access and to examine all records of the Contractor, including financial records, maintenance records, employee records including time, and attendance records, generated by the Contractor and its subcontractors in connection with performance of the Contract resulting from this contract.

#### **4.4 Records Responsibilities**

- A. Upon conclusion of this Contract, APD shall own the complete files, notes, charts, and drawings related to the execution of the services under the Contract. The Contractor shall keep any copies that are needed for its records and future planning for renewal/extension terms.
- B. Records shall be labeled in a manner satisfactory to APD as well as organized and retained in the original folder. All records and documents pertinent to the services contracted hereunder shall be sent to APD for permanent retention prior to destruction by the Contractor. If any litigation, claim, or audit involving these records begins before the retention period expires, the Contractor shall continue to retain said records and documents until all litigation, claims or audit findings are resolved, meaning that there is a final court order from which no further appeal may be made, or written agreement is entered into between the Contractor and APD.
- C. All documents written to fulfill the Contract shall be the property of APD. APD shall use, update, and distribute the documents as APD deems appropriate.
- D. Plans developed for the Contract are considered confidential and proprietary and are not to be distributed to unauthorized parties.
- E. In the event the Contractor requires copies of any non-confidential records after conclusion of the Contract or Contract expiration and management transition, APD shall furnish copies to the Contractor at the Contractor's expense.
- F. Records shall be maintained in accordance with APD's Records Retention Schedule. APD shall provide a copy of our records retention schedule to the Contractor.
- G. APD shall own the copyright for all materials created as part of the Contract unless otherwise mutually agreed upon in writing.
- H. The Contractor shall provide and maintain all documentation pertaining to quality testing, acceptance of deliverables, maintenance and warranty records, inventories of equipment per location, and all reports necessary as per the terms of the Contract in a manner acceptable to APD for the deliverables to be provided. Complete records of all inspection work performed by the Contractor shall be maintained and made available to APD during the resulting Contract's performance and for a period of four (4) years after the termination of the Contract.

#### **4.5 Confidentiality and Security Requirements**

## A. General Confidentiality Requirements

- 1) All information provided by APD to the Contractor or created by the Contractor in performing the obligations under the Contract is confidential and shall not be used by the Contractor or disclosed to any person or entity, unless such use or disclosure is required for the Contractor to perform its work under the Contract.
- 2) The obligations of this section do not apply to information that the Contractor can demonstrate:
  - a. Is publicly available;
  - b. The Contractor received from a third party without restriction on disclosure and without breach of conduct or other wrongful act;
  - c. The Contractor independently developed without regard to APD confidential information; or
  - d. Is required to be disclosed by law or final order of a court of competent jurisdiction or regulatory authority, provided that the Contractor shall furnish prompt written notice of such required disclosure and shall reasonably cooperate with APD at APD's cost and expense, in any effort made by APD to seek a protection order or other appropriate protection of its confidential information.
- 3) The Contractor shall notify APD in writing of any unauthorized release of confidential information within one (1) hour of when the Contractor knows or should have known of such unauthorized release.
- 4) If the Contractor has any questions or doubts as to whether particular material or information is confidential information, the Contractor shall obtain the prior written approval of APD prior to using, disclosing, or releasing such information.
- 5) The Contractor acknowledges that APD's confidential information is unique and valuable, and that APD may have no adequate remedy at law if the Contractor does not comply with its confidentiality obligations under the Contract. Therefore, APD shall have the right, in addition to any other rights it may have, to seek in any Travis County court of competent jurisdiction temporary, preliminary, and permanent injunctive relief to restrain any breach, threatened breach, or otherwise to specifically enforce any confidentiality obligations of the Contractor if the Contractor fails to perform any of its confidentiality obligations under the Contract.
- 6) The Contractor shall immediately return to APD all confidential information when the Contract terminates, at such earlier time as when the confidential information is no longer required for the performance of the Contract or when APD requests that such confidential information be returned.
- 7) The FBI (CODIS) and APD have computer security requirements which may apply. The Contractor's and subcontractor's employees working on this assignment shall sign and submit appropriate agreements and abide by these security requirements, within five (5) calendar days of a APD's request.

- B. Sensitive Personal Information: To the extent this subsection does not conflict with the subsection herein entitled "General Confidentiality Requirements," the Contractor shall comply with both subsections. To the extent this subsection conflicts with the subsection herein entitled "General Confidentiality Requirements," this subsection entitled "Sensitive Personal Information" controls.

"Sensitive personal information" is defined as follows:

- An individual's first name or first initial and last name in combination with any one or more of the following items, if the name and the items are not encrypted:
  - Social security number;
  - Driver's license number or government-issued identification number; or
  - Account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial account; or
- Information that identifies an individual and relates to the physical or mental health condition of the individual;
  - The provision of health care to the individual; or
  - Payment for the provision of health care to the individual.

"Breach of system security" is defined as follows: Unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of sensitive personal information the Contractor maintains under the Contract that would result from this Solicitation, including data that is encrypted if the Contractor's employee or agent accessing the data has the key required to decrypt the data. Good faith acquisition of sensitive personal information by an employee or agent of the Contractor for the purposes of performing under the Contract is not a breach of system security unless the employee or agent of the Contractor uses or discloses the sensitive personal information in an unauthorized manner.

- 1) The Contractor shall implement and maintain reasonable procedures, including taking any appropriate corrective action, to protect from unlawful use or disclosure any sensitive personal information collected or maintained by the Contractor under the Contract.
- 2) The Contractor shall notify APD and the affected people of any breach of system security immediately after discovering the breach or receiving notification of the breach, if sensitive personal information was, or is reasonably believed to have been, acquired by an unauthorized person. However, the Contractor shall delay providing notice to the affected people at APD's request, if APD determines that the notification shall impede a criminal investigation. The notification to the affected people shall be made as soon as APD determines that it shall not compromise any criminal investigation.
- 3) The Contractor shall give notice as follows, at the Contractor's expense:
  - a. Written notice;
  - b. Electronic notice, if the notice is provided in accordance with 15

U.S.C. 7001 – General Rule of Validity;

c. Notice as follows:

- I. If the Contractor demonstrates that the cost of providing notice would exceed two hundred fifty thousand and no/100 dollars (\$250,000.00), the number of affected people exceeds five hundred thousand (500,000), or the Contractor does not have sufficient contact information for the affected people, the Contractor may give notice as follows:
    - i. Electronic mail, if the Contractor has an electronic mail address for the affected people;
    - ii. Conspicuous posting of the notice on the Contractor's website;
    - iii. Notice published in or broadcast on major statewide media; or
  - II. If the Contractor maintains its own notification procedures (as part of an information security policy for the treatment of sensitive personal information) that comply with the timing requirements for notice under this subsection entitled "Sensitive Personal Information," the Contractor may provide notice in accordance with that policy.
- 4) If this subsection requires the Contractor to notify, at one time, more than ten thousand (10,000) people of a breach of system security, the Contractor shall also notify, without unreasonable delay, each consumer reporting agency (as defined by 15 U.S.C. Section 1681a) that maintains files on consumers on a nationwide basis, of the timing, distribution, and content of the notices.
- 5) In the event of a breach of system security, if sensitive personal information was, or is reasonably believed to have been, acquired by an unauthorized person, APD is authorized to assess liquidated damages in the amount of two thousand and no/100 dollars (\$2,000.00) against the Contractor for the following damages, however, APD reserves the right to claim actual damages for any damages other than the following: limited to the initial assessment and review of lost or compromised data. This amount is a reasonable estimate of the damages APD shall suffer as a result of such breach and is enforceable. The Contractor shall not be responsible and liquidated damages may not be assessed due to a breach of system security caused entirely by someone other than the Contractor, the Contractor's subcontractor, or the Contractor's agent. (This clause is not to be interpreted that the Contractor is absolved of liability with any other sections pertaining to cyber security or data protection). Any liquidated damages assessed under this Contract may, at APD's option, be deducted from any payments due the Contractor. APD has the right to offset any liquidated damages payable to APD, as specified above, against any payments due to the Contractor. If insufficient payments are available to offset such liquidated damages, then the Contractor shall pay APD any remaining liquidated damages within fifteen (15) calendar days following

receipt of written notice of the amount due.

#### 4.6 City's Roles and Responsibilities

- A. Coordination of Services: Under the Contract, APD shall coordinate the shipping of the evidence from APD to the Contractor laboratory. APD will identify on the package the DANY or non-DANY designation of the shipment. The Contractor shall provide shipping materials and pay the cost of shipping the evidence to the Contractor laboratory and returning the remaining evidence to APD. The Contractor shall provide analysis reports directly to APD. The Contractor shall provide copies of reports, all profile results, and provide all extraction, quantification, amplification and profiling paperwork and laboratory reports directly to APD. The Contractor shall not return to APD any amplified product, unless specifically requested.
- B. Authority to Provide Service: Authority to provide service is granted only by APD. If APD does not accept the results from the Contractor for whatever reason, the re-testing of the sample shall be provided free of charge by the Contracting laboratory.
- C. On Site Visitation: APD may visit a laboratory or accept another laboratory's on-site visit prior to the testing of evidentiary samples and annually thereafter. Any discrepancies between the information provided in the Contractor's Proposal and the observations made during the site visits shall be addressed prior to beginning performance under this Contract or within thirty (30) business days from notification by APD to the Contractor. APD reserves the right to perform unannounced inspections of the Contractor laboratory at any time during the Contract time period.

#### 5.0 Deliverables/Milestones

Deliverables/Milestones	Description	Timeline (due/completion date, reference date, or frequency)	Performance Measure/ Acceptance Criteria	Contract Reference/ Section
Maintain a Certified Statement of Compliance and forward the results of the most recent proficiency test to APD.	The Contractor shall participate in an external proficiency testing program.	At start of contract and as received	Successful completion of tests.	4.1.A.
Copy of each analyst proficiency testing	External proficiency testing for analysts that meets the standards issued under FBI's Quality Assurance Standards compliance required by the Federal DNA Act at 42 U.S.C. Section 14132(b) (1)	At start of contract and at regular intervals not exceeding 180 days	Testing results for each analyst	4.1.B.
Maintain accreditation by ASCLD/LAB or equivalent	All analysts shall meet the education and experience requirements listed in the reference section.	At start of contract	Proof of accreditation	4.1.C.
Documentation of chain of custody	Documentation requirements listed in the reference section	Maintained and returned to APD 30 days after the report is accepted by APD	Receipt of documents	4.2.D.

Copy of signed confidentiality statement for each employee	Maintain documentation requirements listed in the reference section	Maintained throughout the contract and for 5 years beyond termination	Upon request for audit or review	4.2.F.
Report analysis of forensic DNA samples	Have the capacity listed in the reference section.	Analyze and report results at a mutually agreed upon rate	Meet timeline	4.2.H.
Return any remaining uncollected evidence	Per the requirements in the reference section	30 days after the report and results are approved by APD	Returned to APD	4.2.I.1).c
Provide a validation study of the lyophilization process (should this process be utilized)	Per the requirements in the reference section	30 days after the report and results are approved by APD	Receipt of documents	4.2.I.1).c
Submit suspect known data/profiles	For possible submittal to CODIS	On-going throughout the contract	Receipt of data/profiles	4.2.I.2).c
Save amplified DNA	Per the requirements in the reference section	Until 30 days after the report is accepted by APD	Provide proof of procedure	4.2.I.3).b.III
Compare unidentified DNA profile to others listed	Per the requirements in the reference section	On-going throughout the contract	Upon request	4.2.I.3).b.XV
Provide "case files"	Provide electronic, hardcopy or both for each DNA case submitted	On-going throughout the contract	As completed	4.2.I.4)
Preserve PCR product	Per the requirements in the reference section	Until 30 days after the report is accepted by APD	APD determines if it will be discarded or returned	4.2.K.
Notify APD of testing problems	Per the requirements in the reference section	Immediately	As needed	4.2.L.
Maintain contamination log	Per the requirements in the reference section	As necessary	Upon request of APD	4.2.L.
Provide and maintain documents requested in the records section	Per the requirements in the records section	For a period of 4 years after the termination of the contract	Upon request of APD	4.4.
Notify in writing any unauthorized release of confidential information	When the contractor knows of or should have known of the unauthorized release.	Within 1 hour of discovery	Report to APD	4.5.A.3)
Return of confidential information	Per the requirements	Immediately upon contract termination or when information is no longer needed	Submit to APD	4.5.A.6)

Sign and submit appropriate computer security agreements	Per the FBI (CODIS) and APD	At start of contract and within 5 calendar days of APD's request	Submit to APD	4.5.A.7)
Notify APD and affected people of system security breach	Per the requirements in the reference section	Immediately upon discovery	Notify APD	4.5.B.2)
Copy of laboratory table of organization, including all personnel.	Table shall include all information listed in reference section.	At start of contract and as revisions are made	Receipt of document	N/A
List of individuals working on the contract and resumes of key staff.	List and specific resumes required are listed in the reference section.	At the start of contract and as revisions are made	Receipt of documents	N/A



**EXHIBIT C  
TESTING SCHEDULE**

<b>Month</b>	<b># of DANY designated SAKs to be reported</b>	<b># of other casework/non-DANY designated SAKs to be reported</b>	<b>Total*</b>
Oct-17	15	0	15
Nov-17	25	0	25
Dec-17	50	0	50
Jan-18	75	0	75
Feb-18	75	0	75
Mar-18	100	0	100
Apr-18	110	0	110
May-18	110	0	110
Jun-18	110	0	110
Jul-18	110	0	110
Aug-18	110	0	110
Sep-18	110	0	110
Oct-18	90	90	90
Nov-18	90	90	90
Dec-18	90	90	90
Jan-19	90	90	90
Feb-19	75	75	75
<b>Total*</b>	<b>1000</b>	<b>435</b>	<b>1435</b>

\*Monthly amount reflects a not to exceed total of DANY designated or non-DANY designated SAKs to be reported

**EXHIBIT D**  
**QUOTE 0317-055b (DANY)**



10430 Furnace Rd, Ste 107  
Lorton, VA 22079  
Phone: 866-263-3443  
Fax: 703-646-9741  
bode.service@bodecellmark.com  
www.bodecellmark.com

**CUSTOMIZED PRODUCT AND SERVICES - QUOTATION FORM**

<b>To</b>			
<b>Customer Name:</b> Austin Police Department			
<b>Date:</b> 6/5/2017	<b>Quote#:</b> 0317-055b	<b>Account Manager:</b> Leslie Watkins	
<p><b>Quotation Specifications:</b>          Quote expires 60-days from the date above.  <u>Quote is valid for DANY funded sexual assault kits only.</u>          See attached example of Technical Specifications.          Pricing is based on a volume of approximately 1,000 sexual assault kits.          Pricing is based on batched submissions with samples reported every 30 days based a mutually agreed upon schedule.          The Austin Police Department will be invoiced upon completion.</p> <p>The cost of all materials used for laboratory analyses are to be borne by Bode Cellmark.          Sample analysis will be performed following Bode Cellmark's validated protocols.          Pricing is based on the Technical Specifications detailed in the following pages.          Bode Cellmark will be paid for each sample tested as long as failure to produce a DNA result is not due to an error or omission on part of the laboratory.          Samples will not be consumed without permission from the authorized point of contact.</p>			
Line Item	DNA Services	Price for entire item	Price for extracted sample
1	<b>STR DNA Analysis of Sexual Assault Kit</b>	\$745.00	n/a
2	SAK - Up to THREE evidence samples plus the Victim's reference sample Additional samples greater than described above (per sample)  <i>Bode screens sexual assault kit body swabs for the presence of male DNA using a total human; male quantification assay. Bode proceeds with DNA testing the single most probative/ male DNA positive sample and the victim's reference sample. Bode does not proceed with testing samples that are male DNA negative, inconclusive for the presence of male DNA or if the ratio of total human; male DNA would reduce the chances of obtaining a male DNA profile.</i>	\$215.00	n/a
3	<b>Expert Witness Testimony</b> Video Testimony/ Deposition		\$250/ Hour
4	On-Site Testimony/ Deposition		\$1900/ Day

Note: Expert Witness Testimony fees are not inclusive of travel expenses.

## EXAMPLE TECHNICAL SPECIFICATIONS

### Definitions:

#### SAK: Sexual Assault Exam Kit

#### A. Technical Specifications:

1. Bode Cellmark shall receive samples in quantities and at intervals agreed upon by the Client and Bode Cellmark.  
**Example:** testing of approximately 10% of the identified backlogged SAK kits per month.
2. Samples will be screened with a male DNA screening approach using a commercial quantification kit such as Quantifiler Trio. Male DNA screening uses a PCR based molecular approach instead of conventional serological (body fluid identification) techniques to screen for the presence of a male contributor.
3. Bode Cellmark will use a DNase solution on the sperm fraction during the extraction procedure.
4. Bode Cellmark shall extract DNA from evidentiary items and shall amplify and type using the amplification kit approved by the NDIS laboratory, the Applied Biosystems 3130xl or 3500xl Genetic Analyzer, and GMID-X.
5. Allele sizes and designations shall be determined with an appropriate internal lane standard and allelic ladder which represents all of the common alleles for that particular locus.
6. For cases requiring review by the NDIS LAB for possible CODIS upload, all extraction, amplification, and electrophoresis information, including electropherograms and raw data, shall be provided to NDIS LAB. All documentation shall be properly labeled in accordance with American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) criteria to permit a quality review to be conducted by NDIS LAB personnel.
7. Bode Cellmark shall provide to NDIS LAB interpretation guidelines used in the determination of alleles calls and report conclusions. Guidelines should, at a minimum, address the following:
  - All interpretation thresholds (RFU values) including baseline, analytical and stochastic thresholds;
  - Peak height imbalance interpretation;
  - Interpretation of controls.
8. Bode Cellmark will deliver all reports electronically via secure FTP site.
9. Bode Cellmark will electronically deliver all reports in "batch format" via secure FTP site. Batch format is as follows:
  - Each kit/case will have an individual case report with supporting data.
  - All core forms (lab worksheets) and control data will be delivered in a folder that is separate from the individual case report and supporting data.
  - Case file data will reference the appropriate core forms and control data applicable to the samples.

**B. Chain Of Custody:**

1. Chain of custody is a paramount concern. Bode Cellmark's personnel shall verify receipt of all samples and maintain a proper chain of custody.
2. Samples shall be stored and handled in a proper manner to prevent loss, cross transfer, contamination and/or deleterious change.
3. Extracted DNA samples shall be returned with the evidence samples to the submitting agency on ice. All sample extracts will be returned on ice. Variation from this may result in additional charges.
4. Bode Cellmark shall return all samples sealed in their original containers. The acceptable mode of transportation must provide proper ambient conditions to protect the integrity of the samples, safeguard the chain of custody, and assure prompt turnaround.
5. Client agrees to accept processed kits back in as few as 30-days from case review. Variation from this may result in additional charges.

**C. Bode Cellmark's Qualifications and Quality Assurance:**

1. Bode Cellmark shall maintain ASCLD/LAB or ANAB accreditation with ISO/IEC 17025 accreditation.
2. Bode Cellmark shall comply with The FBI Quality Assurance Standards for Forensic DNA Testing Laboratories.

**EXHIBIT E**  
**QUOTE 0117-005b (Non-DANY)**



10430 Furnace Rd. Ste 107  
Lorton, VA 22079  
Phone: 866-263-3443  
Fax: 703-646-9741  
bode.service@bodetech.com  
www.bodecellmark.com

**CUSTOMIZED PRODUCT AND SERVICES - QUOTATION FORM**

<b>To</b>			
<b>Customer Name:</b> The Austin Police Department			
<b>Date:</b> 06/05/2017	<b>Quote#:</b> 0117-005b	<b>Account Manager:</b> Leslie Watkins	
<p><b>Quotation Specifications:</b>          Quote expires Dec. 31, 2017.          See attached example of Technical Specifications.          Pricing is based on batched submissions with samples reported every 30 days based on the proposed schedule.          The Austin Police Department will be invoiced upon completion.</p> <p>The cost of all materials used for laboratory analyses are to be borne by Bode Cellmark.          Sample analysis will be performed following Bode Cellmark's validated protocols.          Bode Cellmark will be paid for each sample tested as long as failure to produce a DNA result is not due to an error or omission on part of the laboratory.          Samples will not be consumed without permission from the authorized point of contact.</p>			
Line Item	DNA Services	Price for entire item	Price for extracted sample
1	<b>Serology/Screening</b> Source Determination (e.g. p30) <i>Price applies to each item that is processed.</i>	\$125.00	
2	<b>STR or YSTR Analysis</b> Non-Differential Evidence Items (including samples for touch DNA)	\$425.00	\$345.00
3	Differential Evidence Items	\$525.00	\$415.00
4	Stop at Quant	\$155.00	
5	Reference Sample <i>Unit price applies to each sample that is processed.</i>	\$275.00	\$220.00
6	<b>STR DNA Analysis of Sexual Assault Kit</b> SAK - Up to THREE evidence samples plus the Victim's reference sample	\$795.00	
7	Additional samples greater than described above (per sample)  <i>Bode screens sexual assault kit body swabs for the presence of male DNA using a total human: male quantification assay. Bode proceeds with DNA testing the single most probative/ male DNA positive sample and the victim's reference sample. Bode does not proceed with testing samples that are male DNA negative, inconclusive for the presence of male DNA or if the ratio of total human: male DNA would reduce the chances of obtaining a male DNA profile.</i>	\$215.00	
<b>NOTE:</b> Pricing above includes a single day of testimony for one (1) analyst - see below for additional details.			
8	<b>Expedited DNA Services</b> 5 Business Days	100%	
9	10 Business Days	75%	
10	20 Business Days	50%	
11	30 Business Days <i>Expedited fee is a surcharge per sample that is rushed</i>	25%	
12	<b>Expert Witness Testimony</b> Video Testimony/ Deposition		\$250/ Hour
13	On-Site Testimony/ Deposition <i>Expert Witness Testimony fees are included in the above pricing for a single day of testimony for one (1) analyst inclusive of travel. If additional days of testimony or multiple analysts are required, the rate listed above will be billed.</i>		\$1900/ Day

## EXAMPLE TECHNICAL SPECIFICATIONS

### Definitions:

#### SAK: Sexual Assault Exam Kit

#### A. Technical Specifications:

1. Bode Cellmark shall receive samples in quantities and at intervals agreed upon by the Client and Bode Cellmark.  
**Example:** testing of approximately 10% of the identified backlogged SAK kits per month.
2. Samples will be screened with a male DNA screening approach using a commercial quantification kit such as Quantifiler Trio. Male DNA screening uses a PCR based molecular approach instead of conventional serological (body fluid identification) techniques to screen for the presence of a male contributor.
3. Bode Cellmark will use a DNase solution on the sperm fraction during the extraction procedure.
4. Bode Cellmark shall extract DNA from evidentiary items and shall amplify and type using the amplification kit approved by the NDIS laboratory, the Applied Biosystems 3130xl or 3500xl Genetic Analyzer, and GMID-X.
5. Allele sizes and designations shall be determined with an appropriate internal lane standard and allelic ladder which represents all of the common alleles for that particular locus.
6. For cases requiring review by the NDIS LAB for possible CODIS upload, all extraction, amplification, and electrophoresis information, including electropherograms and raw data, shall be provided to NDIS LAB. All documentation shall be properly labeled in accordance with American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) criteria to permit a quality review to be conducted by NDIS LAB personnel.
7. Bode Cellmark shall provide to NDIS LAB interpretation guidelines used in the determination of alleles calls and report conclusions. Guidelines should, at a minimum, address the following:
  - All interpretation thresholds (RFU values) including baseline, analytical and stochastic thresholds;
  - Peak height imbalance interpretation;
  - Interpretation of controls.
8. Bode Cellmark will deliver all reports electronically via secure FTP site.
9. Bode Cellmark will electronically deliver all reports in "batch format" via secure FTP site. Batch format is as follows:
  - Each kit/case will have an individual case report with supporting data.
  - All core forms (lab worksheets) and control data will be delivered in a folder that is separate from the individual case report and supporting data.
  - Case file data will reference the appropriate core forms and control data applicable to the samples.

**B. Chain Of Custody:**

1. Chain of custody is a paramount concern. Bode Cellmark's personnel shall verify receipt of all samples and maintain a proper chain of custody.
2. Samples shall be stored and handled in a proper manner to prevent loss, cross transfer, contamination and/or deleterious change.
3. Extracted DNA samples shall be returned with the evidence samples to the submitting agency on ice. All sample extracts will be returned on ice. Variation from this may result in additional charges.
4. Bode Cellmark shall return all samples sealed in their original containers. The acceptable mode of transportation must provide proper ambient conditions to protect the integrity of the samples, safeguard the chain of custody, and assure prompt turnaround.
5. Client agrees to accept processed kits back in as few as 30-days from case review. Variation from this may result in additional charges.

**C. Bode Cellmark's Qualifications and Quality Assurance:**

1. Bode Cellmark shall maintain ASCLD/LAB or ANAB accreditation with ISO/IEC 17025 accreditation.
2. Bode Cellmark shall comply with The FBI Quality Assurance Standards for Forensic DNA Testing Laboratories.



## City of Austin FSD Purchasing Office Certificate of Exemption

DATE: 02/27/2017

DEPT: City of Austin Police Department

TO: Purchasing Officer or Designee

FROM: Enjole Armstrong

BUYER: Erin D'Vincent

PHONE: (512) 974-5273

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure of \$50,000 or more, unless the expenditure falls within an exemption listed in Section 252.022.

Senate Bill 7 amended Chapter 252 of the Local Government Code to exempt from the requirements of such Chapter expenditures made by a municipally owned electric utility for any purchases made by the municipally owned electric utility in accordance with procurement procedures adopted by a resolution of its governing body that sets out the public purpose to be achieved by those procedures. The Austin City Council has adopted Resolution No. 040610-02 to establish circumstances which could give rise to a finding of critical business need for Austin Energy.

This Certification of Exemption is executed and filed with the Purchasing Office as follows:

1. The undersigned is authorized to submit this certification.
2. The undersigned certifies that the following exemption is applicable to this purchase. (Please check which exemption you are certifying)
  - a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality
  - a procurement necessary to preserve or protect the public health or safety of municipality's residents
  - a procurement necessary because of unforeseen damage to public machinery, equipment, or other property
  - a procurement for personal, professional, or planning services
  - a procurement for work that is performed and paid for by the day as the work progresses
  - a purchase of land or right-of-way
  - a procurement of items available from only one source, including: items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; gas, water, and other utility services; captive replacement parts or components for equipment; books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits
  - a purchase of rare books, papers, and other library materials for a public library
  - paving, drainage, street widening and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements
  - a public improvement project, already in progress, authorized by voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes as authorized by the voters

- a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212
- personal property sold: at an auction by a state licensed auctioneer; at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or under an interlocal contract for cooperative purchasing administered by a regional planning commission established under Chapter 391
- services performed by blind or severely disabled persons
- goods purchased by a municipality for subsequent retail sale by the municipality
- electricity
- advertising, other than legal notices
- Critical Business Need (Austin Energy Only)

3. The following facts as detailed below support an exemption according to Section 252.022 of the Local Government Code for this purchase. Please verify the steps taken to confirm these facts. If you are citing the following exemptions, please provide the additional information requested below. A more detailed explanation of these exemptions is attached.

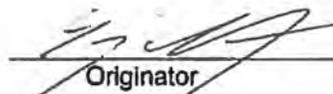
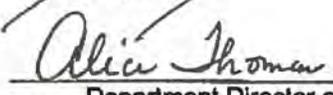
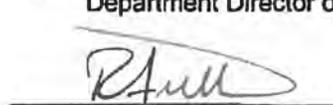
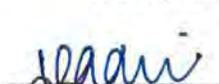
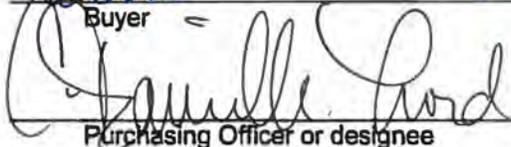
- **Preserve and Protect the Public Health and Safety** – Describe how this purchase will preserve and protect the public safety of residents.
- **Sole Source** – Describe what patents, copyrights, secret processes, or natural monopolies exist. Attach a letter from vendor supporting the sole source. The letter must be on company letterhead and be signed by an authorized person in company management.
- **Personal Services** – Describe those services to be performed personally by the individual contracted to perform them.
- **Professional Services** – Describe what mainly mental or intellectual rather than physical or manual and/or disciplines requiring special knowledge or attainment and a high order of learning, skill, and intelligence are required to perform this service.
- **Planning Services** – Describe the services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan, or regional land areas.
- **Critical Business Need** – Describe the procurement necessary to protect the competitive interests or position of Austin Energy.

APD has suspended indefinitely in-house operations of its DNA lab after concerns were raised by the Texas Forensic Science Commission. In the interim, the Texas Department of Public Safety (DPS) is being sent casework for testing, however DPS cannot handle the volume of APD cases. APD wishes to contract with a third-party vendor to conduct DNA analysis and forensic serological services of biological evidence for APD casework. This contract will ensure that casework continues to flow so investigators will have the information they need to solve these crimes.

4. Please attach any documentation that supports this exemption.
5. Please provide any evaluation conducted to support the recommendation. Include the efforts taken to ensure the selected vendor is responsible and will provide the best value to the City (Ex: evaluation of other firms, knowledge of market, etc).

Bode Cellmark is fully accredited by the Texas Forensic Science Commission and is capable of accepting the volume of casework APD plans to send. APD is requesting a high capacity of cases to meet the DANY grant deadlines and Bode Cellmark has successfully worked over 400 non DANY sexual assault kits for APD through the Department of Public Safety (DPS). Bode Cellmark also has a relationship with DPS that will allow CODIS entry solutions. No other lab that APD has contacted is able to meet the capacity/CODIS demand that APD requires.

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with Bode Cellmark which will cost approximately \$ 1,300,000.00 (Provide estimate and/or breakdown of cost).

Recommended Certification	 _____ Originator	3/3/17 Date	
Approved Certification	 _____ Department Director or designee	3/3/17 Date	
	 _____ Assistant City Manager / General Manager or designee (if applicable)	3/8/17 Date	
Purchasing Review (if applicable)	 _____ Buyer	3.9.17 Date	 Manager Initials
Exemption Authorized (if applicable)	 _____ Purchasing Officer or designee	3/9/17 Date	

02/26/2013

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

## OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:  
2017-251032

Date Filed:  
08/17/2017

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Bode Cellmark Forensics, Inc.  
Lorton , VA United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Austin

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

MA 8700 PE170000002  
Forensic Serological and Deoxyribonucleic Acid Analysis of Biological Evidence

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.

6 AFFIDAVIT I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

  
\_\_\_\_\_  
Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said George C. Maho, this the AUG 21 2017 day of \_\_\_\_\_, 20\_\_\_\_, to certify which, witness my hand and seal of office.

  
\_\_\_\_\_  
Signature of officer administering oath

**BESSIE L BAILEY**  
Printed name of officer administering oath

**BESSIE L BAILEY**  
NOTARY PUBLIC  
ALAMANCE COUNTY, NC  
My Commission Expires 4-12-2020  
Title of officer administering oath

**Negotiated and Clarified Items**  
**MA 8700 PE17000002**  
**Bode Cellmark Forensics, Inc.**

Contract Section or Page Number	Title	Issue	Outcome
5.6	Ownership and Use of Deliverables	Bode will not share Confidential Information pertaining to how we develop/process this testing; however, the City can have ownership to the actual reports that are created from this testing.	COA Legal agreed by inserting the language that was pasted into 5.6
7.11	Advertising	Bode proposes to make the language mutual, matters of public record or internal city council agendas are normal and customary, and not what we care to review.	COA Legal agreed by inserting the language that was pasted into 7.11 which deviates from our standard language
Exhibit D	Pricing		DANY (Grantor) approved contract price at \$745 per kit
Exhibit D Page 37	Pricing, Lines 3 & 4	Bode did not include expert witness testimony elsewhere in the contract and the fees are not inclusive of travel expenses	Added